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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ARI AZHIR, Plaintiff and Appellant, v. SHAHLA CHEHRAZI RAFFLE et al., Defendants and Respondents.	No. H044216 (Santa Clara County Super. Ct. No. CV286532)

Ari Azhir (Azhir) brought suit in October 2015 against Shahla Cherazi Raffle (Chehrazi Raffle) and Stephen M. Raffle for breach of oral contract and other claims. (Hereafter Chehrazi Raffle and Stephen Raffle are collectively referred to as the Raffles.) The dispute arose out of an alleged loan of $70,000 by Azhir to the Raffles in February 2012. Azhir was represented by Alan S. Levin, who is an attorney and a medical doctor (Attorney Levin or Levin).

The Raffles moved to disqualify Attorney Levin. They contended he had a conflict of interest because, some years prior, Chehrazi Raffle and her then-counsel, Ivan Weinberg (Weinberg), had consulted with Levin as an attorney, and they had provided confidential information to him in connection with that consultation. The Raffles argued that Attorney Levin had attempted to utilize that confidential information in the present case to attack Chehrazi Raffle's credibility, and that he should therefore be disqualified. The court granted the disqualification motion. Azhir appeals from that order.

We conclude the trial court did not abuse its discretion in granting the motion to disqualify. We will therefore affirm the order.

I. PROCEDURAL BACKGROUND

Azhir filed a complaint for damages against the Raffles on October 6, 2015. She alleged that the Raffles were investors in Neuraltus Pharmaceuticals, Inc. (Neuraltus), a Delaware corporation located in Palo Alto. Azhir alleged that on or about February 27, 2012, the parties entered into an oral agreement under which Azhir agreed to loan the Raffles $70,000 so that they could acquire Neuraltus stock. On March 1, 2012, Azhir purchased the stock on behalf of the Raffles. Thereafter, when Azhir asked that the loan be repaid, the Raffles requested an extension of time; Azhir agreed to extend the date of repayment to June 15, 2015. On that date, the Raffles refused to repay the loan.

In the complaint, Azhir alleged causes of action for breach of oral contract, for money had and received, and for fraud. She sought recovery of the amount of the loan plus interest, and alleged in the third cause of action that the Raffles acted with malice, oppression, and fraud in making false promises to repay the loan, seeking punitive damages.

On August 17, 2016, the Raffles filed a motion to disqualify Attorney Levin. As discussed in greater detail, *post*, the Raffles contended that in 2007, Chehrazi Raffle, both directly and through her attorney, Weinberg, had consulted with Attorney Levin in connection with potential litigation. Azhir opposed the motion. The court by order filed November 14, 2016, granted the motion to disqualify. Azhir file a timely notice of appeal. (See *Metro-Goldwyn-Mayer, Inc. v. Tracinda Corp.* (1995) 36 Cal.App.4th 1832, 1838 [order on disqualification motion is appealable].)[1]

[1] The notice of appeal reflects that the appeal is taken from a judgment or order entered November 8, 2016. The notice does not otherwise specify the order from which the appeal is taken, and the disqualification order was neither signed nor filed on

II. DISCUSSION

A. Motions to Disqualify Counsel

A trial court may disqualify counsel based upon its inherent power "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner pertaining thereto." (Code Civ. Proc., § 128, subd. (a)(5); see *In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 586.) A motion to disqualify counsel may implicate several important interests, including "a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion. [Citations.]" (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145 (*SpeeDee Oil*).) At its core, a motion to disqualify "involve[s] a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. [Citation.] The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process. [Citations.]" (*Id.* at pp. 1145-1146.)

November 8, 2016. The Raffles filed a motion to dismiss the appeal, or, in the alternative, to permit augmentation of the record. This court denied the Raffles' motion to dismiss and granted their alternative motion to augment the record. In their motion, the Raffles argued that because Azhir had referenced in the notice of appeal an order that could not be identified by reference to the clerk's transcript, this court had no jurisdiction to hear the appeal. The Raffles renew that argument in respondents' brief herein. We liberally construe notices of appeal to achieve substantial justice and to permit appellant to assert the merits of the matter. (Cal. Rules of Court, rule 8.100(a)(2); see *Luz v. Lopes* (1960) 55 Cal.2d 54, 59-60.) Therefore, we will construe the notice of appeal as an appeal from the disqualification order filed November 14, 2016, and will consider the merits of that appeal.

There are two separate categories of attorney conflicts of interest arising from the representation of multiple clients. They are (1) "the successive representation of multiple clients resulting in a conflict of interest, i.e., where the attorney's representation of the current client may conflict with the interests of a former client . . . [, and (2)] the concurrent (or dual) representation of multiple clients resulting in a conflict of interest." (*M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 613.) We are concerned here with the first category, successive representation, where "the courts have recognized that the chief fiduciary value jeopardized is that of client *confidentiality*." (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283, original italics (*Flatt*).) The attorney's obligation to maintain client confidences which is central to successive representation conflicts is confirmed by California statute. (See Bus. & Prof. Code, § 6068, subd. (e)(1).)[2] This obligation survives the termination of the attorney-client relationship. (*SpeeDee Oil, supra,* 20 Cal.4th at pp. 1144-1145.)

In successive representation cases, the former client bringing the motion to disqualify must "demonstrate a '*substantial relationship*' between the subjects of the antecedent and current representation." (*Flatt, supra,* 9 Cal.4th at p. 283, original italics.) A substantial relationship exists where "the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. [Citation.]" (*City and County of Santa Clara v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847.) In instances of a direct relationship between the attorney and the former client and where a substantial relationship between the subjects of the prior and current matters is shown, there is a *conclusive presumption* that the attorney obtained confidential information in the course of representation of the former client. (*Flatt, supra,* at p. 283.)

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[2] "It is the duty of an attorney to do all of the following: [¶] . . . [¶] (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." (Bus. & Prof. Code, § 6068, subd. (e)(1).)

This conclusive presumption is required in part because " ' " it is not within the power of the former client to prove what is in the mind of the attorney. . . ." The conclusive presumption also avoids the ironic result of disclosing the former client's confidences and secrets through an inquiry into the actual state of the lawyer's knowledge . . . .' [Citation.]" (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 706 (*Jessen*).) And "substantial relationship" has "a broader definition than the discrete legal and factual issues involved in the compared representations . . . . Thus, successive representations will be 'substantially related' when the evidence before the trial court supports a rational conclusion that information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues. [Citations.]" (*Id.* at pp. 712-713.)

A trial court's ruling on a motion to disqualify counsel is generally reviewed for abuse of discretion. (*SpeeDee Oil, supra,* 20 Cal.4th at p. 1143.) If the trial court resolves the matter by considering disputed factual issues, the appellate court does not substitute its judgment for that of the trial court, and its express and implied findings will be upheld if supported by substantial evidence. (*Ibid.*) If the court's findings are supported by substantial evidence, the appellate court reviews those findings under an abuse of discretion standard. (*Id.* at p. 1144.) But "the trial court's discretion is limited by the applicable legal principles . . . [and] where there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law. [Citation.]" (*Ibid.*) Further, "the trial court's conclusions of law . . . [are] review[ed] . . . de novo; a disposition that rests on an error of law constitutes an abuse of discretion. [Citations.]" (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159.)

B. No Abuse of Discretion in Granting Disqualification Motion

1. Appellant Azhir's Noncompliant Briefs

Our review of this appeal is impeded by the material noncompliance of Levin, counsel for appellant Azhir, with the rules of appellate procedure. Specifically, in connection with the opening brief filed with this court, Levin has (1) failed to include proper citations to the record, and (2) improperly referenced matters outside of the record.

Levin's opening brief is replete with statements of specific factual matters supporting his client's claim that the court below erred. But he fails repeatedly to include citations to the appellate record identifying where the specific facts were presented to the trial court. His description in the opening brief of the nature of the action and his three-page statement of facts contain *no* citations to the appellate record. The reply brief contains only three citations to the record, one of which being simply to the trial court's order granting disqualification.

This failure to include citations to the record constitutes a violation of rule 8.204(a)(1)(C) of the California Rules of Court,[3] which requires that every brief "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited. [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 406-407; see also *Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451 [factual statements in briefs "not supported by references to the record are disregarded" by the reviewing court].)

[3] Further rule references are to the California Rules of Court.

There is a further, related, difficulty presented by Levin's failure to include citations to the record in the opening brief. Levin refers to a number of matters in his opening brief—unsupported by citations to the record—such as the purpose of the alleged loan, the nature of Neuraltus's business and setbacks it sustained, and references to hospitalizations. These matters (assuming their existence) are not part of the appellate record.

As counsel for appellant, Levin is required by the California Rules of Court in his opening brief to "[p]rovide a summary of the significant facts *limited to matters in the record*." (Rule 8.204(a)(2)(C), italics added.) "Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.) We will therefore disregard extraneous matters outside the record that are referenced in Levin's brief. (*Banning v. Newdow* (2004) 119 Cal.App.4th 438, 453, fn. 6.)

2. Facts Relevant to the Motion to Disqualify

a. Motion to Disqualify

The Raffles argued in the motion to disqualify that Levin should not represent Azhir in this case because Levin had a conflict of interest. They asserted that this conflict of interest arose out of the fact that Chehrazi Raffle and Weinberg, an attorney representing her, had consulted with Levin as an attorney in connection with a potential products liability suit.

Attorney Weinberg represented Chehrazi Raffle as of early 2007 in connection with two matters that related to an automobile accident.[4] In February 2007, Chehrazi

[4] The Raffles filed an augmented record consisting of two volumes, the first containing redactions, and the second being filed under seal and containing no redactions. The matters involving attorney Weinberg's representation of Chehrazi Raffle and the discussions the two of them had with Attorney Levin are subject to redaction. We have reviewed and considered both the redacted and unredacted portions of the appellate

Raffle contacted Attorney Levin to consult with him about a potential products liability claim against a pharmaceutical company. (This potential litigation bore some relationship to, but was not the subject of, Weinberg's legal representation of Chehrazi Raffle.)

After the telephone conversation between Levin and Chehrazi Raffle, and at her request, Weinberg contacted Levin on February 12, 2007, and "had a lengthy telephone conversation with Dr. Levin." Attorney Levin confirmed with Weinberg that Chehrazi Raffle had previously consulted with Levin regarding a possible products liability action. Weinberg and Levin discussed "the accident and the circumstances leading up to it, [and] information [Weinberg] had obtained from [Chehrazi Raffle] and her medical providers" as the information related to the matters in which Weinberg represented her. They "also discussed issues that Dr. Chehrazi Raffle experienced some years earlier . . . [redacted material]." Weinberg declared that when the two attorneys spoke, "Levin already knew much of the information [the two attorneys] discussed and said that he learned it from his consultation with Dr. Chehrazi Raffle."

Additionally during their conversation, Weinberg discussed with Levin an expert witness whom Weinberg contemplated retaining, and he asked whether Levin might be an appropriate expert in the two matters in which Weinberg represented Chehrazi Raffle. Levin said that the expert Weinberg was considering was a better choice; Levin stated that one reason for this view was that Levin had already "engaged in legal consultation with Dr. Chehrazi Raffle about the matters at issue, and that those conversations would be subject to attorney-client privilege."

On the same day, Weinberg followed up the telephone conversation with a letter to Levin. In response, Levin on February 16, 2007, sent an email to Weinberg and Chehrazi

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record. It is unnecessary to disclose in this opinion any confidential material contained only in the augmented record filed under seal herein.

Raffle, stating that Levin would "be happy to work with you in any capacity you see fit," and would have no difficulty working with the medical expert suggested by Weinberg. In the email, Levin expressed that he had "decades" of experience and familiarity with the entity involved in one of the matters in which Weinberg represented Chehrazi Raffle; Levin offered Weinberg advice on how to deal with that entity in the matter in which Weinberg represented Chehrazi Raffle. The same day, Weinberg sent an email to Levin in response. (The substance of the email was redacted nearly in toto.)

The Raffles argued in their motion that Levin had used the confidential knowledge that he had gained as a result of his 2007 consultation with Chehrazi Raffle and Attorney Weinberg to attempt to impeach the Chehrazi Raffle's credibility in the current litigation. They contended that Levin therefore had a disqualifying conflict of interest that prevented him from representing Azhir in this matter.

In their motion, the Raffles asserted that although "[a]t the outset, the subject of the present litigation did not appear to be substantially related to [Attorney] Levin's attorney-client privileged consultation with Dr. Chehrazi Raffle in 2007[, t]his changed on July 14, 2016, when [Attorney] Levin took the deposition of Dr. Chehrazi Raffle." As shown in the declaration of the Raffles' counsel, which included relevant excerpts of the deposition transcript, Levin asked Chehrazi Raffle about her medical history, including what the Raffles' counsel characterized as "highly embarrassing and inflammatory questions about [matter redacted]." The Raffles' counsel suspended the deposition, advising that she intended to file a motion for protective order, and possibly a motion to disqualify counsel based upon Levin's prior attorney-consultation with Chehrazi Raffle and his questioning of her at her deposition.[5]

[5] The Raffles below also filed a motion for protective order and a motion to quash subpoena duces tecum. In separate orders filed November 14, 2016, the court (1) granted the protective order, precluding Azhir from conducting discovery concerning medical issues involving Chehrazi Raffle or from utilizing confidential and privileged information

b. Opposition to Disqualification Motion

Azhir, through Attorney Levin, opposed the motion to disqualify, filing a memorandum of points and authorities, and a declaration from Levin. Azhir argued in her memorandum of points and authorities initially that the contact from Chehrazi Raffle to Levin involved soliciting his potential help as an expert medical witness, denying that she contacted Levin concerning potential legal representation in a products liability action. Azhir next contended that no attorney-client relationship ever formed between Levin and Chehrazi Raffle, asserting that the contact between them was a "peripheral connection between an attorney and a prospective client." Azhir argued further in her opposition memorandum that Chehrazi Raffle never provided any confidential information to Levin, and Levin at no time during the instant litigation used any such material confidential information.

Attorney Levin, in his opposing declaration, stated that he had known Chehrazi Raffle socially since approximately 1995 through Azhir, a mutual friend. He declared that Chehrazi Raffle contacted him in September 2006 to act as a medical expert witness on her behalf. Levin thereafter contacted Weinberg, her attorney, and "volunteered [his] services as a medical expert with intimate knowledge of the workings of [an entity involved in one of the matters being handled by Weinberg on Chehrazi Raffle's behalf]." Levin declared that after further investigation, he withdrew from the case. He stated that Chehrazi Raffle never asked him to represent her as her attorney, he never considered acting as her counsel, and he never gave her legal advice.

c. Order on Disqualification Motion

The motion to disqualify was heard by the court on October 13, 2016. By order filed November 14, 2016, the court granted the Raffles' motion to disqualify Attorney

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previously received by Levin; and (2) granted the motion to quash subpoenae that had been directed to two medical providers.

Levin. It concluded, inter alia, that (1) it was "essentially undisputed" that Levin received confidential and privileged information also protected by the right to privacy during consultation with Chehrazi Raffle and her prior counsel, Weinberg; (2) Levin sought to use the confidential information in the present litigation; (3) it was immaterial that Levin disputed that an attorney-client relationship existed between Levin and Chehrazi Raffle because it was clearly shown that Levin obtained confidential information from Chehrazi Raffle; and (4) Levin should be disqualified because of his receipt of confidential information and his attempt to use it in the current litigation, regardless of whether he obtained the information as a consulting expert, and attorney, or in both capacities.[6]

2. Disqualification Was Proper

Since this is a successive representation case, the relevant elements the Raffles were required to establish in their disqualification motion were that Levin had a direct relationship as an attorney with Cherazi Raffle in the prior matter, and that there was a substantial relationship between the prior matter and the current case in which Levin represented the adverse party, Azhir. (See *Flatt*, *supra*, 9 Cal.4th at p. 283.) Further, if a direct relationship between Chehrazi Raffle and Levin in the prior matter were shown, it would be conclusively presumed that Levin had obtained confidential information from Chehrazi Raffle in that matter. (See *Jessen*, *supra*, 111 Cal.App.4th at p. 706.)

It is apparent from the substance of Levin's opening brief filed on behalf of Azhir that Levin challenges the first element mentioned above, i.e. that he had a direct relationship with Chehrazi Raffle in the prior matter from 2007. Levin asserts (without citation to the record) that Weinberg was incorrect in stating in his declaration that Chehrazi Raffle contacted Levin to request legal representation in a potential products

[6] Azhir did not request preparation of the reporter's transcript of the hearing on the motion.

liability suit. Levin states in his brief that, in fact, "Levin's interaction with Chehrazi [Raffle] consisted of a single, brief telephone call with a few introductory e-mails and phone calls." Further, Levin disputes in his brief (again, without citation to the record) that he obtained any confidential information from Chehrazi Raffle or that he provided any legal advice or services to her. Levin's challenge to the court's disqualification order on these grounds is without merit.

As noted by the trial court below, there was a dispute as to whether an attorney-client relationship existed between Levin and Chehrazi Raffle. In his declaration, Levin stated that (1) Chehrazi Raffle contacted him in September 2006 about becoming an expert medical witness; (2) Levin thereafter contacted Attorney Weinberg to "volunteer[] [his] services as a medical expert," (3) Chehrazi Raffle never asked Levin to represent her as an attorney in any matter; (4) he never considered acting as Chehrazi Raffle's attorney; and (5) he never gave legal advice to Chehrazi Raffle. But there was contrary evidence—including much evidence uncontradicted by Levin—supporting the conclusion that Levin was consulted in his capacity as an attorney. Weinberg declared that after Chehrazi Raffle contacted Levin to consult with him about a potential products liability claim, Weinberg had a lengthy telephone conversation with Levin in which Levin confirmed Chehrazi Raffle's prior consultation with him, and the two attorneys discussed her accident and circumstances, including Chehrazi Raffle's medical information, related to Weinberg's representation. Weinberg declared further that he had identified an expert he contemplated retaining, and Weinberg asked if Levin might be an appropriate expert. Levin responded that the contemplated expert would be a better choice, stating that Levin had already "engaged in legal consultation with Dr. Chehrazi Raffle about the matters at issue, and that those conversations would be subject to attorney-client privilege." And several days after the telephone conversation, Levin sent an email to Weinberg and Chehrazi Raffle, stating, inter alia, that Levin would "be happy to work with you in any capacity you see fit." In that email, Levin also offered opinions concerning an entity that

was involved in one of the matters in which Weinberg represented Chehrazi Raffle, and Levin offered advice concerning strategy in dealing with that entity—opinions and advice that could reasonably be construed as legal advice.

Although the trial court acknowledged this dispute as to whether Levin was consulted in his capacity as an attorney, the court concluded it was "essentially undisputed" that Levin, through the consultation, "received . . . both attorney-client privileged information and information protected by [Chehrazi Raffle's] right of privacy." As a result, the trial court held that since Levin "now seeks to use, confidential and privileged information [in the present case]," he was disqualified, irrespective of whether his prior capacity in consulting with Chehrazi Raffle and her then-attorney was as an attorney, as an expert, or both. Although the court did not make an express finding that Levin was consulted in his capacity as an attorney, based upon the evidence presented in the Raffles' motion as outlined in the preceding paragraph, there was substantial evidence of the existence of an attorney-client relationship between Levin and Chehrazi Raffle. (*SpeeDee Oil, supra,* 20 Cal.4th at p. 1143 [express and implied findings of trial court upheld if supported by substantial evidence].) Further, the fact that the trial court made no express finding concerning the existence of such attorney-client relationship is of no consequence, since we review the correctness of the trial court's decision, not its rationale. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.)[7]

Once the existence of a direct professional relationship between Levin and Chehrazi Raffle was established, it was conclusively presumed that Levin obtained confidential information from her. (See *Flatt, supra,* 9 Cal.4th at p. 283; *Jessen, supra,*

[7] In his opposition to the motion filed below, Levin argued that his prior involvement with Chehrazi Raffle was only as a potential expert witness. Levin has not renewed that argument on appeal, and we therefore deem it to be abandoned. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4.)

111 Cal.App.4th at p. 706.) In any event, it was undisputed that Levin *did*, in fact, obtain confidential information as a result of his consultation with Chehrazi Raffle and her then-attorney, Weinberg.[8]

The remaining question in reviewing the disqualification motion is whether the Raffles "demonstrate[d] a '*substantial relationship*' between the subjects of the antecedent and current representation." (*Flatt, supra*, 9 Cal.4th at p. 283, original italics.) As the Raffles acknowledged both below and on appeal, the confidential and privileged information concerning Chehrazi Raffle that Levin is presumed to have obtained as a result of his consultation in the prior matter appears superficially to have little relationship to the current loan dispute. But it is clear that Levin, in the discovery he pursued below—along with his statements justifying that discovery—*expressly made* the prior matter substantially related to the present dispute. Without disclosing here the specifics of the confidential and private information pertaining to Chehrazi Raffle discussed with Levin in 2007, this information was the clear subject of repeated questioning by Levin during Chehrazi Raffle's deposition.[9] In response to objections asserted by the Raffles' attorney to deposition questions, Levin argued that the line of inquiry was relevant to the issue of Chehrazi Raffle's credibility in the present case. And in his opposition to the motion, Levin did not deny that the matters about which he

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[8] In his declaration in opposition to the motion, Levin did not dispute the statements in Weinberg's declaration that Levin obtained confidential information, including private medical information pertaining to Chehrazi-Raffle, as a result of Levin's consultation with respect to the two matters in which Weinberg represented Chehrazi Raffle. Although Levin, in his unsworn memorandum of points and authorities filed below, denied that he received any confidential information during his consultations with Chehrazi Raffle and Weinberg, this was not evidence and therefore did not raise a factual dispute on the matter. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1702 [matters asserted in memorandum of points and authorities are not evidence].)

[9] The record reflects that Levin asked eight questions of Chehrazi Raffle during her deposition that concerned matters that were the subject of her consultation in 2007 with Levin.

inquired were substantially related to the present case. To the contrary, Levin argued to the trial court that "[s]ince this case involves an oral contract, the veracity of the testifying party is vitally important for the jury to ascertain the credibility of the testimony." Given the close connection between the information Levin is presumed to have obtained during his consultation with Chehrazi Raffle and her then-attorney Weinberg and the matters about which Levin sought to depose Chehrazi Raffle in the present case to attack her credibility, *Levin himself* has established the " '*substantial relationship*' between the subjects of the antecedent and current representation." (*Flatt*, *supra*, at p. 283, original italics; see also *Jessen*, *supra*, 111 Cal.App.4th at p. 713 [evidence supported trial court's "rational conclusion that information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues"].)

In conclusion, we are concerned here with the propriety of disqualification of counsel under successive representation circumstances, where "the courts have recognized that the chief fiduciary value jeopardized is that of client *confidentiality*." (*Flatt*, *supra*, 9 Cal.4th at p. 283, original italics.) There was substantial evidence in the record before the trial court that a prior professional relationship between Levin and Chehrazi Raffle from 2007 existed. It was therefore conclusively presumed that Chehrazi Raffle imparted confidential information to Levin arising out of that relationship. (*Ibid.*) Indeed, the undisputed evidence below was that Levin *did obtain* confidential and private information concerning Chehrazi Raffle as a result of Levin's consultation with her and Attorney Weinberg. And a substantial relationship existed between the matters involved in the prior professional relationship and the current case. (*Ibid.*) Under these circumstances, acknowledging the "conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility . . . [t]he important right to counsel of one's choice must yield to ethical considerations that affect

the fundamental principles of our judicial process. [Citations.]" (*SpeeDee Oil*, *supra*, 20 Cal.4th at pp. 1145-1146.) The trial court did not abuse its discretion in granting the Raffles' motion to disqualify Levin as counsel for Azhir in this case.

III. DISPOSITION

The order filed November 14, 2016, granting the motion of respondents Chehrazi Raffle and Stephen Raffle to disqualify Alan S. Levin as counsel for appellant Azhir is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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GREENWOOD, P.J.

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DANNER, J.

Azhir v. Raffle
H044216